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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,780	03/22/2004	Daniel Lorenzo Blum	10231-00001	9927

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EXAMINER

RADI, JOHN A

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,780

Applicant(s)

BLUM, DANIEL LORENZO

Examiner

John A. Radi

Art Unit

3641

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 25-34 is/are pending in the application.
- 4a) Of the above claim(s) 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-19 and 25-34 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/22/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19, and 25-34, are drawn to a wing device, classified in class 244, subclass 4A.
- II. Claims 20-24, drawn to a ram-air canopy, classified in class 244, subclass 153A.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination doesn't require the canopy to be made of a plurality of three-dimensional cells and associated stiffening members. The subcombination has separate utility such as a kite not attached to a human.

A telephone call was made to Mr. Larry Meier was made on October 12, 2005 to request an oral election to the above restriction requirement, which resulted in invention I being elected.

During a telephone conversation with Mr. Larry Meier on October 12, 2005 a provisional election was made to prosecute the invention of invention I, claims 1-19 and 25-34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3641

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-12, 14-19, and 25-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bachmann (US 4756555), and further in view of Barresi (US 5213289).

Bachmann discloses a wing device (40) worn by user comprising: a user harness (32, fig 5-9) having a left and right shoulder strap (68/70), left and right wings (34/35), wing control handles (124/124a) adapted to be grasped by the hand of a user, flexible strap proximate first end (94), wherein flexible strap is attached to shoulder straps by way of harness (42). Wherein said handle is attached at any point from about mid-point between leading edge to trailing edge (122, 122a), and attachment means includes a buckle (62). Wherein left and right wings can be operated independently of each other and substantially in accordance with the motion of the user's arms (col. 11, lines 47-50).

Bachmann doesn't show a ram-air canopy comprising: top panel, bottom panel, plurality of vertical ribs, stiffening means along leading edge, and on bottom edge, wherein air-cells of the canopy are connected by holes to allow air to flow between adjacent cells, wherein cells contain vents on the topside. Barresi discloses a framed airfoil kite containing: a ram-air canopy, a top panel (2), bottom panel (3), plurality of vertical ribs (4), stiffening means (16) along leading edge (5), and a stiffening means (33) on bottom edge (6), wherein air-cells of the

Art Unit: 3641

canopy are connected by holes (8) to allow air to flow between adjacent cells (col. 7, lines 15-28), wherein cells contain vents on the topside (43). Bachman shows a motivation to have the wing-like structures made of a flexible fabric material that makes them easy to transport and store when not in use. Furthermore ram-air canopies are well known in the art for their drag producing effect, as well as wing-like properties when inflated. The ram-air canopy taught by Barresi provides a frame-like structure for the added benefit of preventing the leading edges from tucking under during flight which could cause the ram-air cells to deflate. Furthermore, the frame disassembles to assist in transporting the wing when not in use. It would have been obvious to one skilled in the art at the time of invention to substitute the canopy of Barresi for the wing of Bachmann, as a substitution of functional equivalents, and therefore the applicant's claims are *prima facie* obvious.

Art Unit: 3641

Allowable Subject Matter

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

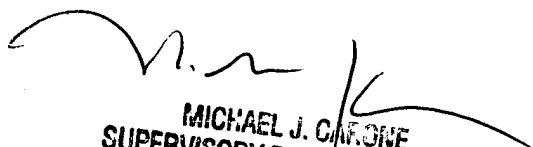
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure, see attached form PTO-892 for a complete listing of prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Radi whose telephone number is 571-272-5883. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER

John A. Radi
Patent Examiner
Art Unit 3641